

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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KEVIN V. BYNG,

Plaintiff,

-v-

6:22-CV-1406

BOB KELLY, Executive Director,  
Utica Municipal Housing Authority,  
and BOB CONNELLY, Security, Utica  
Municipal Housing Authority,

Defendants.  
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APPEARANCES:

OF COUNSEL:

KEVIN V. BYNG  
Plaintiff, Pro Se  
212 Rutger Street  
Utica, NY 13501

DAVID N. HURD  
United States District Judge

**ORDER ON REPORT & RECOMMENDATION**

On December 29, 2022, *pro se* plaintiff Kevin Byng (“plaintiff”) filed this 42 U.S.C. § 1983 action alleging that defendants violated his civil rights in connection with his tenancy in local public housing. Dkt. No. 1. Along with his complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 2.

On February 24, 2023, U.S. Magistrate Judge Andrew T. Baxter granted plaintiff's IFP Application and advised by Report & Recommendation ("R&R") that plaintiff's: (1) § 1983 First Amendment freedom-of-association claim and (2) Fair Housing Act/race discrimination claims should survive *sua sponte* review and require a response. Dkt. No. 5. However, Judge Baxter recommended plaintiff's other claims be dismissed with leave to amend. *Id.*

On March 20, 2023, this Court adopted Judge Baxter's R&R without any objection from plaintiff. Dkt. No. 6. Thereafter, plaintiff filed an amended complaint in accordance with Judge Baxter's R&R, Dkt. No. 7, which was returned to Judge Baxter for an initial review of its sufficiency, *see* Dkt. No. 10. Defendants' deadline to respond to the pleading was stayed pending review of the amended complaint. *Id.*

On April 17, 2023, Judge Baxter advised by R&R that (1) the amended complaint be accepted as the operative pleading; (2) plaintiff's § 1983 First Amendment freedom-of-association claim and Fair Housing Act/race discrimination claims against defendants Kelly and Connelly should survive review and require a response; and (3) plaintiff's other claims be dismissed without further leave to amend. Dkt. No. 11. While Judge Baxter's second R&R was pending review, plaintiff filed a letter motion seeking a preliminary injunction. Dkt. No. 12. Plaintiff has also filed letters with the Court in

which he inquires as to the status of his motion and explains that he has been wrongly evicted. Dkt. Nos. 13, 15.

The case review deadline has now expired. Dkt. No. 11. Upon *de novo* review, the R&R is accepted and will be adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C).

Therefore, it is

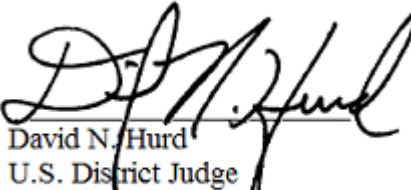
ORDERED that

1. The Report & Recommendation (Dkt. No. 11) is ACCEPTED;
2. Plaintiff's amended complaint (Dkt. No. 7) is ACCEPTED for filing as the operative pleading to the extent it alleges: (1) a § 1983 First Amendment freedom-of-association claim; and (2) a Fair Housing Act /race discrimination claim against defendants Kelly and Connelly;
3. Plaintiff's remaining claims are DISMISSED without further leave to amend;
4. Plaintiff's motions for injunctive relief are DENIED; and
5. Plaintiff's amended complaint shall be returned to Judge Baxter for appropriate orders relating to service on the remaining defendants.

The Clerk of the Court is directed to terminate the pending motions.

IT IS SO ORDERED.

Dated: May 10, 2023  
Utica, New York.

  
David N. Hurd  
U.S. District Judge